

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Mary Berg,

Complainant,

FINDINGS OF FACT,
CONCLUSIONS AND
ORDER

vs.

Clark A. Ilse, St. Louis County Recorder,

Respondent,

The above-entitled matter came on for hearing before Administrative Law judge Peter C. Erickson on June 24 and 25, 1986 in the St. Louis County Courthouse, Duluth, Minnesota. The record on this matter closed on August 11, 1986, the date of receipt of the final post-hearing briefs.

Don Paquette, Attorney at Law, 2000 Aquila Avenue North, Minneapolis, Minnesota 55427, appeared on behalf of the Complainant, Mary Berg. Mary L. Peterson, Assistant St. Louis County Attorney, 501 Courthouse, Duluth, Minnesota 55802, appeared on behalf of the Respondent, Clark A. Ilse.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. 363.072, any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether:

(1) The Respondent discriminated against Mary Berg on the basis of sex concerning her employment with the County Recorder's Office in violation of Minn. Stat. 363.03, subd. 1(2)(c) (1984);

(2) Clark Ilse engaged in a reprisal against Mary Berg because she had filed a charge of discrimination against him in violation of Minn. Stat. VXEG O DQG

(3) The Respondent is subject to a penalty and the Complainant is entitled to any of the relief provided for in Minn. Stat. 363.071, subds. 1a and 2 (1984), if discrimination is proved.

Based upon all of the proceedings, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mary J. Berg is a 37-year old, single female. Ms. Berg has been married twice; to Ken Pietila from 1966 to 1970, and to Mark Lachecki from 1974 to 1980. Ms. Berg had two children in the Pietila marriage; Christian, who is 19 years old and Tom, who is 17 years old. At the present time, Tom resides with Ms. Berg.

2. Mary Berg graduated from high school in 1966 and attended Duluth Business University from 1971 through 1973 where she took a course to become an executive medical secretary. From March of 1973 through September of 1974, Ms. Berg worked for the S.A. McClennon Company. She was laid-off in 1974 due to a lack of work.

3. In the fall of 1974, Mary Berg took a civil service test with St. Louis County because she had just been remarried and needed employment to be able to purchase a house. Before she was informed that she passed the civil service exam, she was told by the Civil Service Department to interview with Clark Ilse for a position in the County Recorder's Office. Ms. Berg went to the interview wearing pants and was told by Mr. Ilse that he would hire her although he could not see her ankles. Mary Berg was hired by Clark Ilse on the same day as the interview and commenced employment in the County Recorder's Office on September 24, 1974.

4. Respondent Clark A. Ilse, an elected County Official, has held the position of St. Louis County Recorder from 1971 through the present. He is currently 68 years old. The County Recorder's Office is responsible for review and official recording of documents relating to real estate in St. Louis County. The Office is divided into the Torrens Division and the Abstract Division and is staffed by a Chief Deputy County Recorder, intermediate managerial staff, and clerical employees. The Torrens Division reviews, verifies, and records documents which establish adjudicated title to property. The Abstract Division is responsible for accepting documents affecting title to real estate in St. Louis County and recording those documents in grantor-grantee and tract indexes. The Abstract Division must review all documents received for completeness.

5. The staff of the Recorder's Office is currently comprised of 17 employees, 16 of which are female and 1 of which is male. The Torrens Division is organized with a clerk senior supervisor and a clerk specialist lead worker overseeing Torrens Division employees. The Abstract Division is overseen by a clerk specialist lead worker with the Chief Deputy County Recorder as the ultimate supervisor. This organizational structure was developed after a survey had been completed by the County Civil Service Department in 1976. At that time, the Recorder's Office employed a chief administrative assistant and an administrative assistant who were the office managers and supervisors. These positions were eliminated by attrition, which

occurred in approximately 1982.

6. Mary Berg was hired by the County Recorder's Office as a Clerk Typist I in September of 1974. Her initial job duties, which lasted approximately three weeks, were to look up mineral records. Ms. Berg was then placed in the

Torrens Division for approximately three months where she typed certificates of title. Berg was then transferred to the Abstract Division where she became

Mr. Ilse's personal secretary. Ms. Berg was certified as a Clerk Typist I after a probationary period on March 24, 1975.

7. Mary Berg received regular promotions in the Recorder's Office as follows:

April 7, 1975: Provisional appointment to Clerk Typist II.
September 10, 1975: Original appointment to Clerk Typist II.
March 10, 1976: Certified after probation as Clerk Typist II.
September 10, 1976: Original appointment to Clerk Typist III.
March 10, 1977: Certified after probation as Clerk Typist III.
August 1, 1977: Original appointment to Clerk Typist IV.
March 10, 1977: Certified after probation as Clerk Typist IV.
(highest level clerical position)
July 1, 1983: Title changed to Clerk Specialist and salary
adjustment. (Adjustment made after Countywide clerical study).

8. From 1975 through 1977, Mary Berg's job duties remained essentially the same, functioning as Mr. Ilse's secretary and mailing documents to the public. In late 1977, Ms. Berg began recording documents into the indexes. It was her responsibility to check the information on the documents to be recorded to make sure they were complete in all respects. Additionally, Ms. Berg answered the phone and waited on the public. During this period of time, from 1975 through 1977, Mr. Ilse and Ms. Berg had a friendly relationship. Mr. Ilse would occasionally go to lunch and coffee with Ms. Berg along with other employees in the Recorder's Office.

9. In late 1978, the administrative assistant, Dan DeSciscio, was moved into the Torrens Division offices. Consequently, Mr. Ilse asked Mary Berg to assume his managerial duties for the Abstract Division. Ms. Berg's job responsibilities were increased to include:

- (a) checking all documents that were received in the mail for completeness of information;
- (b) take the appropriate documents to the auditor's office for taxation;
- (c) process civil service papers regarding the hiring and disciplining of employees;
- (d) maintain yearly files on all Abstract Division employees;
- (e) do performance appraisals on Abstract Division employees when the Administrative Assistant was not able to;
- (f) order office supplies;
- (g) do Mr. Ilse's personnel correspondence;
- (h) deal with members of the public concerning all questions regarding locating information in the Abstract Division;
- (i) supervising all of the other Abstract Division employees;
- (j) recommend disciplinary action for Abstract Division employees to Mr. Ilse;
- (k) distribute the workload when Division employees were sick or on vacation;

- (l) discuss employee "problems" with Mr. Ilse;
- (m) write checks for the Division;
- (n) attend supervisory and management meetings; and
- (o) maintain employee time records and assist with payroll.

Mr. Ilse would refer members of the public to Mary Berg himself if they had any questions concerning the Abstract Division and introduce new Division employees to Berg as their supervisor..

10. Mr. Ilse and Mary Berg went to lunch and on coffee breaks together on a regular, frequent basis through 1981. Clark would always ask Mary to go to lunch with him and join her table when she was on break. Another Recorder's Office employee, Alice McManus would often-times accompany Ilse and Berg when they went to lunch. During this period of time, Mary Berg and Clark Ilse developed a close personal friendship which resulted in Mary being allowed special privileges including longer lunch breaks, longer coffee breaks, attendance at seminars, and a general ability to come and go from work as she pleased. It was common knowledge that Berg had become Mr. Ilse's "pet". Office disharmony was created because Mary Berg received privileges from Clark Ilse which were not extended to other employees except Ms. McManus, who would often accompany the two for lunch and breaks. Ms. McManus is currently 63 years old.

11. Mr. Isle did take other female employees to lunch, however, on a much less frequent basis than Berg and McManus. Isle always paid for the lunches.

12. After the expansion of her job duties in 1978, Mary Berg was given a name plaque for use on her desk with the job title of "Deputy Recorder" inscribed on it. From 1979 through 1983, Clark Ilse made a concerted effort to have Mary Berg's position of Clerk Typist IV upgraded to a supervisory position and job title. On May 16, 1979, Mr. Ilse wrote a letter to Patricia Paulson, Director of County Civil Service, which requested that the position of Deputy Recorder be established in the Abstract Division for the job Mary Berg was doing at that time. In the letter, Ilse stated that, "this employee [referring to Mary Berg as Clerk Typist IV] supervises 13 employees and has to

handle all legal documents and make legal determinations from those documents and certainly should be above the present rating of Clerk IV."

13. In 1978, Clark Ilse, Mary Berg and Alice McManus attended a County Recorder's Seminar in Rochester, Minnesota. Alice and Mary shared a hotel room, and Clark had a room by himself down the hall. After the three had eaten dinner one evening, Ms. McManus left to go back to her room to call her husband. When Ilse and Berg were walking together back to their rooms, Clark grabbed Mary and tried to kiss her. Berg pulled herself away and Clark asked Mary to go into his room with him. Berg then ran into her room and slammed the door. She then told Alice what had happened in the hallway. The following evening, before dinner, Alice and Mary were in Ilse's room having a drink. When Alice went to the restroom, Ilse told Mary that "all she would have to do is just lay there." Ms. Berg responded by stating that nothing would ever happen between the two and that they would have to work together.

14. From 1977 to 1982, Clark Ilse commented several times to Mary Berg about how nice and big Berg's breasts were. Those comments were made in ilse's office and in the coffee shop. Ilse would also comment, when looking at another woman, that "hers are not as nice as yours" when he was with Mary

Berg. Ilse also made comments about Berg's legs and stated to her on several occasions that she was the "only one that could get it up for him." Ilse also commented on at least one occasion to Berg that she filled out her sweater well, Mary would tell Clark to "knock it off" when these comments were made to her.

15. When Ilse was together with Berg, he attempted to make physical contact with her by touching legs or by grabbing her buttocks with his hand. This "grabbing" would occur on a regular basis after the two had had coffee and were going back up the stairs to the office. Leta Pulling and Gail Smithson, Recorder's Office clerical workers, observed Ilse place his hand on Mary Berg's buttocks. Ms. Berg would consciously run up the stairs ahead of Ilse so that no touching could occur. When McManus, Ilse and Berg drove somewhere to go to lunch, Mary would have Alice sit in the car between her and Respondent, to avoid touching from Clark. Berg tried to avoid ever having to be alone with Ilse outside the office.

16. The "touchings" and sexual comments stopped abruptly in mid-1982 when Mary Berg began dating Robert Brown, the St. Louis County Examiner of Titles. Mr. Brown had an office which was located right next to Respondent's in the office space of the St. Louis County Recorder. However, Brown was appointed by the District Court Judges and was independent from the Recorder's Office, serving only in an advisory capacity to the Recorder. Robert Brown had been initially appointed as Examiner in 1967 and continues to hold that position.

17. Prior to Brown's involvement with Mary Berg, Clark Ilse would occasionally come into Brown's office and talk about how good looking Berg was. Ilse stated that Berg's desk was positioned so that he could observe her from his office. He also stated that he liked Berg to wear skirts. Mr. Ilse would often stand in the doorway of Brown's office, looking out at Mary, when he made these comments.

18. After Brown began dating Berg in July of 1982, he informed Ilse of the relationship. Brown had had an early discussion with Ilse when the topic of inter-office dating had been brought up. Clark Ilse was very much opposed to Brown dating any of his female employees because of the conflicts which

could result. When Brown told Ilse that he was dating someone in the office, Ilse stated that he would kill Brown. At the time that the comment was made, however, Ilse did not know who it was that Brown was dating. Brown then did inform him that he was seeing Mary Berg. Mr. Brown had recently separated from his wife and was divorced in August of 1982.

19. Through mid-1982, Clark Ilse treated Mary Berg as the "supervisor" of the Abstract Division and gave her all of the job responsibilities associated with a supervisory position. Ilse engaged in numerous discussions with the County Social Service Department regarding the upgrading of Berg's position and salary. Three studies were done by County Civil Service regarding job classifications in the Recorder's Office. Each study resulted in a conclusion that Mary Berg's position was not that of a supervisor, but rather that of a "lead worker" for the Abstract Division. In 1983, her job title was changed from Clerk Typist IV to Clerk Specialist, although the job responsibilities remained essentially the same. Additionally, a hearing was held before the State Bureau of Mediation Services regarding the proper classification of

Berg's job position. That hearing resulted in a decision that Berg's job was non-supervisory. At all times relevant herein, Mary Berg has been a member of a non-supervisory bargaining unit.

20. Mary Berg did receive County Personnel Communications that were directed to supervisors and did attend several training sessions for supervisors. The position of Clerk Typist IV or Clerk Specialist is the "head" clerical position in the Abstract Division and does involve some supervisory functions, including assigning work to other clerical employees. In 1984, Berg attended a county supervisor's training session and received a certificate for successful completion.

21. Because the St. Louis County Social Service Department refused Clark Ilse's request to have Berg's position upgraded, Berg sent a letter to the Council on the Economic Status of Women, located in St. Paul, which stated that she had been discriminated against by the County. On July 8, 1982, Mary Berg filed a charge with the Minnesota Department of Human Rights which alleged that the St. Louis County Civil Service Department had discriminated against her on the basis of sex because her job had not been reclassified. This charge did not contain allegations of sexual harassment,

22. After Clark Ilse was informed that Mary Berg and Bob Brown were dating, his relationship with Ms. Berg changed dramatically. Ilse no longer went to lunch or on breaks with Mary Berg and his communications with her during the work day ceased almost entirely. It was obvious to everyone in the Recorder's Office, including Clark Ilse, that Berg and Brown were dating because they went to lunch together and were seen holding hands in the courthouse. Ilse gradually took all of Berg's "supervisory" functions away from her and the "confidential" relationship they had had was terminated. Ilse carefully observed the interaction between Brown and Berg from his office.

23. Mary Berg lost her "favored" or privileged status and found that many of her job duties were being removed after mid-1982. She was no longer considered to be the "supervisor" of the Abstract Division by Clark Ilse. Specifically, Berg was no longer responsible for assigning other employees work duties; she no longer was permitted to perform job appraisals; Ilse no longer referred the public to her to answer questions; she was no longer informed as to employee absences or vacations so the workload could be redistributed; she was no longer permitted to keep time records for employees; Berg no longer did any of Clark Ilse's correspondence; and she was no longer consulted regarding employee "problems". This "new" non-supervisory status was made clear to the other clerical employees by Ilse.

24. Although Ilse's relationship with Berg changed and her job responsibilities were diminished after mid-1982, Clark continued to seek job reclassification for her through January of 1983. Initially, Ilse did not think that the Berg-Brown relationship would last.

25. In 1984, after Mary Berg received the response from the Department of Human Rights concerning the charge she had filed in 1982, she felt she had

been "used" by Clark Ilse and that the office restructuring would prohibit her from reclassification as a supervisory employee. Consequently she withdrew her charge against the County Civil Service Department and, on November 2, 1984, filed a charge of discrimination against Clark Ilse. The charge alleged

that Ilse had sexually harassed Berg from the beginning of her employment with the County Recorder's Office. The charge stated in addition that "for the past two years I have been treated unfairly with respect to the terms, conditions, upgrading and privileges of my employment." Berg alleged that this "change" in employment was a different manifestation of the sexual harassment which had occurred through mid-1982.

26. Since mid-1982 when her job duties were greatly diminished, Ms. Berg has felt demeaned and belittled by Clark Ilse. In 1982, Berg developed high blood pressure and currently takes medication to control it. At the end of 1984, Ms. Berg became very depressed about her job situation and saw a psychiatrist at the Duluth Clinic. She was prescribed an anti-depressant medication which she is currently taking. During this period of time, other "personal" events occurred which also caused stress for Berg: her father died in 1983; her son was coping with a chemical dependency problem and has been involved in the court system; she recently had surgery on her neck; and she is dealing with a chemically dependent mother.

27. After Berg's 1984 charge was filed, Ilse approached Alice M:Manus and told her that "nothing had better be said about Rochester or we'll all be hurt, Mary most of all." At that time, the Civil Service records which Berg had maintained were taken from her and placed in Mr. !Ise' office. Berg was allowed to "process" the office mail only after it had been initially screened by another employee, and she was no longer permitted to order supplies for the office. At the present time, Berg's job duties consist of:

- (a) checking the mail after it has been screened by another employee;
- (b) to check in documents and cash received in the mail;
- (c) make sure documents are proper for recording purposes;
- (d) to procure deed stamps from the Auditor's Office;
- (e) refer documents to be entered into the indexes; and
- (f) to wait on the counter and take phone calls.

All of these job functions are included in the job description for Clerk Specialist.

28. Before Berg's charge was filed against Clark Ilse in November of

1984, she had not complained to any county officials, County Civil Service or her union about being sexually harassed. Because Ilse was the head of the department, and was an elected official, Mary Berg did not know who she could complain to and was afraid of the effect it might have on her employment.

29. In May of 1984, Cathy Racek, a Recorder's Office employee stationed in Virginia, Minnesota, was transferred to Duluth. She was made a Clerk Specialist in the Torrens Division. Racek took the Civil Service exam for the position of Chief Deputy, along with Mary Berg, and was appointed to that supervisory post in May of 1985. Mary Berg took the Civil Service exam for the position of Chief Deputy in May and December of 1984 but failed it on both occasions. Ms. Racek became Mr. Ilse's "favored" employee after her transfer to Duluth. Ms. Berg is unhappy about Racek's transfer and promotion to a supervisory position over her.

30. Cathy Racek took over the function of ordering supplies as part of her supervisory functions and assigns work to Abstract Division clericals.

The employee personnel records were moved to Clark Ilse, office pursuant to a study and recommendation done by the Civil Service Department in 1985. Office mail was screened after Berg's charge was filed to sort out communications from attorneys concerning the case.

31. On March 8, 1985, Mary Berg filed a charge alleging reprisal against Clark A. Ilse with the Minnesota Department of Human Rights.

32. Mary Berg attended County Recorder conventions in 1980 and 1982 along with Alice McManus, Clark Ilse and Cathy Racek. At each of these meetings, Berg spent a night out of her motel room with another male participant at the convention. Ms. Racek was immediately aware of this but did not inform Clark Ilse until sometime late in 1982.

33. In 1983, Mary Berg purchased a home from the widow of Mr. Ilse's best friend, who had recently died. Because Ms. Berg could not afford the payments, the house purchase was cancelled. This created tension between the widow, Ilse and Mary Berg.

34. In 1983, Mary Berg was arrested for DWI and assaulting a police officer. She had to spend the night in jail and went to work the next day after the arrest.

35. Through the present, Mary Berg's job performance has always been rated satisfactory. However, her performance has been lax since approximately 1984. This lax performance is not reflected in current job performance appraisals and she has not been instructed by supervisors or Mr. Ilse to improve. Mary Berg has felt she is of little value to the Recorder's Office since the removal of many of her job functions. On one occasion she asked Clark Ilse why she should even come to work, to which he had no response. At the present time, Berg has trouble sleeping and finds it miserable to go to work.

36. At the present time, Bob Brown and Mary Berg are engaged to be married.

37. Mary Berg has never been demoted or disciplined by Respondent, denied any merit increase or denied any promotion for which she has been qualified.

38. In the spring of 1986, Mary Berg had neck surgery and was hospitalized for a period of time. During her absence, Ilse approached Alice McManus about taking over Berg's job. This did not happen, however. Ms. Berg returned to work and resumed her "usual" job functions.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction over this matter pursuant to Minn. Stat. 363.071, subd. 1a and 14.50 (1984). The Notice of Hearing was issued by the Office of Administrative Hearings in a timely manner after referral of this case by the Commissioner of the Department of Human Rights

2. The Respondent is an employer as defined in Minn. Stat. 363.01, subd. 15 (1984).

3. The Complainant has proved by a preponderance of the evidence that she was sexually harassed and subject to unwelcome sexual advances, sexually motivated physical contact and other verbal and physical conduct of a sexual nature which created an intimidating, hostile and offensive employment environment for purposes of Minn. Stat. 363.01, subd. 10a(3) (1984) from approximately 1977 through mid-1982.

4. The Complainant has proved that her rejection of Respondent's sexual advances and conduct, by openly dating Bob Brown, was the motivating factor in the elimination of her job duties from mid-1982 to the present for purposes of Minn. Stat. 363.01, subd. 10a(2) (1984).

5. The Complainant has proved that Respondent has engaged in a continuing course of discrimination based on sex in violation of Minn. Stat. 363.03, subd. 1(2)(c) (1984) which has affected her employment through the present. Consequently, the issue of reprisal need not be addressed herein,

6. The Respondent should pay a civil penalty to the state in the amount of \$1,000 pursuant to Minn. Stat. 363.071, subd. 2 (1984).

7. Mary Berg should recover the amount of \$10,000 for the mental anguish and suffering she has experienced pursuant to Minn. Stat. 363.071, subd. 2 (1984).

8. The Respondent should pay to Mary Berg the sum of \$1,500 as punitive damages pursuant to Minn. Stat. 363.071, subd. 2 and 549.20 (1984),

9. Reasonable attorney fees should be awarded after submission of the appropriate Affidavits by Complainant's counsel.

Based upon the foregoing Conclusions and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That the Respondent shall cease and desist from its discriminatory practices as set forth herein.

2. That the Respondent pay to the Complainant \$10,000 for mental anguish and suffering and \$1,500 as punitive damages.

3. That the Respondent pay to the general fund of the State of Minnesota

as a civil penalty the amount of \$1,000. The payment shall be filed with the Chief Administrative Law Judge for submission to the general fund.

4. Reasonable attorney fees shall be awarded. Complainant's counsel shall submit Affidavits to support an award of fees within ten days of receipt of this Order. The Respondent may submit argument on the reasonableness of the fees requested within seven days of receipt of Complainant's Petition.

S. The effective date of this Order for purposes of appeal shall be the date on which the Order awarding attorney fees is issued.

Dated this day of September, 1986.

PETER C. ERICKSON
Administrative Law Judge

Reported: Larry Monroe, St. Louis County District Court Reporter.
No transcript prepared.

MEMORANDUM

The substantive legal issue in this case is whether Mary Berg was sexually harassed by her employer, Clark A. Ilse. The term "sexual harassment" is defined in Minn. Stat. 363.01, subd. 10a (1984), as follows:

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

(1)

(2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment . . .; or

(3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile, or offensive employment . . . environment; and in the case of employment, the employer knows or should have known of the existence of the harassment and fails to take timely and appropriate action.

The elements of a charge of sexual harassment have been enumerated in both state and federal case law as: that the Complainant belongs to a protected group; that she was subjected to unwelcome sexual harassment; that the harassment, using a "but for" test, was based on sex; that the harassment affected a term, condition or privilege of her employment; and that the employer knew or should have known about the existence of the harassment but failed to take timely and appropriate action to stop it. *Continental Can Co. v. State*, 297 N.W.2d 241 (Minn. 1980); *Henson v. City of Dundee*, 682 Fed.2d 897, 903-905 (11th Cir. 1982); *Meritor Savings Bank, FSB, Petitioner, v. Mechelle Vinson, et al.*, 106 S.Ct. 2399 (1986).

Most discrimination cases involve a three-step process of pleading and proof. First, the Complainant must establish a prima facie case of discrimination. The Respondent must then rebut the prima facie case by articulating some legitimate, non-discriminatory reason for the employment action in dispute, and then the Complainant may show that the reasons offered by the Respondent are a mere pretext for illegal discrimination. Hubbard v. United Press Intern., Inc., 330 N.W.2d 428, 441 (Minn. 1983). The requirement to establish a prima facie showing of discrimination has been adopted as a surrogate for a showing of intent, because intent itself cannot generally be established with direct evidence. A prima facie case supplies the necessary inference of such an intent. However, it has been recognized that in actions based on sexual harassment, the three-part analysis is not ordinarily applicable because employers will not generally have a legitimate, non-discriminatory reason for harassment. See, Henson v. City of Dundee, supra, at 905 n. 11.

In this case, there are two distinct periods of time, each of which must be examined to determine whether discrimination has occurred. The first time period runs from the date Mary Berg commenced employment with the Recorder's Office through mid-1982, the time when she began dating Bob Brown. The three-part analysis does not seem to apply to this time period because the issue is basically whether the acts alleged occurred and what effect they had. The second distinguishable time period is from mid-1982 through the present. The Judge has found that the "unwelcome sexual advances" and "verbal communication of a sexual nature" ceased in 1982, after Berg began dating Brown on a regular basis. During the second time period, use of the three-part analysis is appropriate because Respondent has admitted that Complainant's job status changed after 1982, but that it was changed for "legitimate, non-discriminatory reasons."

Some time after Mary Berg commenced employment at the Recorder's Office, Clark Ilse began going on breaks and having lunch with her. The Judge has found that Clark Ilse made sexual advances to Mary Berg, and that he made

verbal communications of a sexual nature. The Judge is clearly convinced that these events, as testified to by Mary Berg, occurred. Other witnesses, Smithson and Pulling, also observed that Respondent touched Complainant in an inappropriate manner. The judge is also convinced that the sexual advances and touchings were "unwelcome" by Complainant and that an "offensive" employment environment was created because of the touchings and verbal comments.' Berg tried to avoid this sexual conduct whenever possible. Clark Ilse was the department head, and an elected County Official, consequently, Ms. Berg felt she had no recourse to stop the harassment.

'On the afternoon prior to the commencement of this proceeding, the Judge issued an oral ruling denying Respondent's Motion to limit Complainant's evidence to only a period 300 days prior to the date the charge was filed. The court reporter was present at the time this ruling, and the reasons for it, were issued.

'The statutory definition of "sexual harassment" and case law recognize that an action may be maintained, even if the terms and conditions of employment are not changed, if a hostile or offensive work environment are created. Minn. Stat. 363.01, subd. 10a(3) (1984); Trettner v. Liquipak Intern. Inc., 356 N.W.2d 713 (Minn.App. 1984).

The Findings above reflect clearly that after Mary Berg started dating Bob Brown, her status in the Office changed dramatically. She was no longer the recipient of any special privileges and her "quasi-supervisory" job position was stripped to the point that her job title of Clerk Specialist (lead worker), was meaningless. Also, Mr. Ilse stopped communicating with Ms. Berg and made it apparent to all of the other employees that she no longer had the authority that she once had. The three-part analysis must be used to determine whether these changes in the terms of Complainant's employment were the result of discrimination.

Thus, in this situation, Ms. Berg must initially establish a prima facie case of discrimination by showing that: (1) she is a member of a protected group; (2) she was the subject of unwelcome sexual conduct and/or communications by Respondent; (3) that conduct and/or communication was rejected by Complainant; (4) terms and/or conditions of her employment were changed; and (5) there is a nexus between the rejection and the change in employment. Minn. Stat. V X E G D Continental Can Co., Inc. v. State, supra; Bundy v. Jackson, 641 F.2d 934 (D.C.Cir 1981); Henson v. City of Dundee, supra; Meritor Savings Bank, FSB v. Mechelle Vinson, supra. Respondent may then present evidence of a legitimate nondiscriminatory reason for its actions. If the Respondent produces such evidence, the Complainant must show that the reasons articulated are merely a pretext for discrimination. Sigurdson v. Isanti County, 386 N.W.2d 715 (Minn. 1986).

The Complainant, a single female, has shown that for the period of time through mid-1982, she was the subject of sexual harassment by Respondent. During that time, an "offensive" work environment existed but no terms or conditions of her employment were changed. In mid-1982, her employment status and job position began to be changed by Clark Ilse, the department head. These changes started to occur immediately after Berg began openly dating and having lunch with Bob Brown. Respondent admits that many of the job responsibilities given to Ms. Berg prior to 1982 were eliminated. However, Respondent cites several "legitimate" reasons for the removal of those responsibilities. Mr. Ilse testified that Mary Berg's "over-night" activities while attending County Recorder conventions, Berg's cancellation of the house purchase from Ilse's best friend's widow, and Complainant's DWI arrest resulted in a "change in attitude" for Mary Berg and himself. Ilse could not associate any "attitude changes" with inadequate job performance of Ms. Berg, however.

The Judge is convinced that the reasons articulated by Clark Ilse for "reducing" Berg's job functions are only a pretext, formulated for the purpose

of this proceeding. During Mr. Ilse's deposition, he was not able to list any specific reasons for taking the actions he did concerning Berg's employment. Rather, he made unclear statements about Berg's changing "attitude". At the hearing on this matter, Ilse brought written notes to the stand when called for adverse examination and wanted to read into the record the various reasons for his actions, regardless of the question asked by Complainant's counsel. Even after the reasons were put into the record, Ilse continued to make vague statements concerning Berg's attitude and was unable to associate any change in her job performance with any of the reasons he had listed. Clearly, Ilse stripped Berg of her job duties because Berg rejected the continued close association with him, by openly dating Bob Brown, which had previously allowed Clark to play-out his sexual fantasies. Consequently, the Judge has concluded that the Complainant has proved a prima facie case of sex discrimination for

the period subsequent to July of 1982 and that Respondent has failed to rebut that prima facie case. Thus, the removal of Complainant's job functions by Respondent constituted acts of sex discrimination in violation of Minn. Stat. Ch. 363.

Complainant has also alleged acts of reprisal against Respondent. However, the Judge has already concluded that sexual harassment occurred between approximately 1977 and 1982 and that the discrimination continued when Respondent began stripping away Complainant's job duties after mid-1982 to the present. Consequently, the issue of reprisal need not be addressed herein. Resolution of that issue will not affect the assessment of appropriate damages.

Complainant did not suffer any compensatory losses. The Judge has determined that the amount of \$10,000 is appropriate to compensate Complainant for the mental anguish and suffering she has experienced in this matter. The Judge points out that in arriving at this award, he had taken into consideration that Mary Berg did not file an action alleging sexual harassment until the fall of 1984, when it became apparent that her attempts to achieve a supervisory reclassification were futile. This realization, in conjunction with the fact that all of her supervisory duties had been stripped away by Respondent, contributed to the "degree" of anguish experienced. Additionally, the record shows that other factors (see Finding 26) also created stress in Ms. Berg's personal life. The judge has specifically found, however, that the diminution of Berg's authority and job responsibilities was belittling and demeaning. It made Mary feel that she had little worth in the Recorder's Office. She developed an anxiety about her job which at least contributed to high blood pressure and the need for psychiatric treatment. Thus, damages for mental anguish and suffering have been awarded.

in addition, it is concluded that the Respondent should pay \$1,000 as a civil penalty to the general fund to the State of Minnesota pursuant to Minn. Stat. 363.071, subd. 2. That statutory provision mandates that a civil penalty be paid if a Respondent is found to be in violation of any provision of the Human Rights Act. In determining the amount of the civil penalty to be paid, the Administrative Law Judge must consider the seriousness and extent of the violation, the public harm occasioned by it, whether the violation was intentional, and the financial resources of the Respondent. In this case, a civil penalty is appropriate because Respondent acted intentionally and with indifference to Mary Berg's working conditions.

The Administrative Law Judge is also persuaded that the Complainant should

be awarded \$1,500 as and for punitive damages pursuant to Minn. Stat.

549.20 and 363.071, subd. 2. Punitive damages must be measured by statutory factors including the seriousness of hazards to the public arising from a Respondent's misconduct, the profitability of the misconduct, its duration, its concealment, the degree of the Respondent's awareness of the hazard, the attitude and conduct of the Respondent upon its discovery, the Respondent's financial condition, and the total effect of other punishment likely to be imposed upon the Respondent as a result of its misconduct. In this case, it is concluded that \$1,500 is a reasonable penalty. Respondent acted intentionally, using his position as department head and an elected public official to sexually harass Mary Berg and strip her of her job duties after his unwelcome advances were rejected. Ms. Berg attempted to find out why her job status was being changed and even inquired of Clark Ilse the reasons for her even coming to work. Mr. Ilse was not responsive to any of these inquiries.

P.C.E.

